

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2208 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgment?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SATISH NAVINCHANDRA JAYSWAL

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for the Petitioner.
MR MR PRAJAPATI for Petitioner No. 1
Ms.Archana Raval, Assistant GOVERNMENT PLEADER ,
for Respondent No. 1-3
RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 27/07/2004

ORAL JUDGEMENT

By fling this petition, the petitioner-detenu has
challenged his detention order, by which he is detained

as a 'bootlegger' under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the detention order, the petitioner is also served with the grounds of detention.

In the grounds of detention, there is a reference about a solitary criminal case registered against the petitioner. The said criminal case is registered before the Gorva Police Station as Crime Register No.295 of 2003. The said case is filed under the Bombay Prohibition Act. It is alleged that the petitioner is dealing in Beer and foreign liquor. After considering the said case and after considering the statements of secret witnesses, whose names have not been disclosed to the petitioner, the petitioner has been detained under PASA as a 'bootlegger'.

The learned Advocate for the petitioner submitted that this is a solitary incident and, therefore, it cannot be said that the petitioner is a habitual offender or that he has disturbed public order. He also further submitted that since this is the solitary incident, the petitioner should not have been detained under PASA. To substantiate this say, the learned Advocate for the petitioner has relied upon the decision of this Court in Sandip Omprakash Gupta v. State of Gujarat and others, 2004(1) GLR 864. In the said decision, a solitary offence under the Bombay Prohibition Act was registered against the detenu and the authority relied on two other unregistered offences based on statements of certain witnesses and, therefore, a learned single Judge of this Court held, on facts, that the detenu could have been dealt with under the ordinary criminal law. The order of detention passed therein, treating the petitioner as a bootlegger, is set aside. Since I am bound by the view taken by the learned single Judge, in view of the aforesaid ground about solitary incident of a registered case under the Bombay Prohibition Act, only on the basis of the aforesaid submission about solitary case lodged against the petitioner, which can be taken care of under the ordinary criminal law, this petition is required to be allowed.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. The Rule is made absolute accordingly.

27th July, 2004 (P.B. Majmudar, J.)

(apj)